

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

**Course: IP Protection in India: Registration, Enforcement and Dispute Resolution
Semester- IX (Batch: 2018-23)**

End Semester Examination: November 2022

Date: 12th Nov, 2022

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Word Limit: 10 Marks:500 words.

- | | Marks |
|--|-----------------|
| <p>Q.1 The Plaintiff is aggrieved by the use of the mark 'FieldTrip' as a keyword by the Defendant No.1 on the Google Ads Program. The case of the Plaintiff is that when a search is carried out for 'FieldTrip' in the Google search bar, quite often the first advertisement which is displayed in the search results in the advertisement category is that of Defendant No.1- reservation.com, who is one of the major competitors of the Plaintiff. The Plaintiff has placed on record the screenshots of the search results, as well as auction insight of its own account on Google Ads Program to show that Defendant No.1- reservation.com has made bids for the keyword 'fieldtrip' on the Google Ads Program in order to ensure that its website is shown as one of top three search results in the advertisement category when someone searches for 'FieldTrip' on Google. According to the Plaintiff, such use of its registered mark would constitute infringement, especially when done by its competitor such as reservation.com.</p> <p>Write a short judgment on whether the encashment of the goodwill and reputation of a registered trade mark by third parties by bidding on it as a keyword through the Google Ads Program would amount to infringement and passing off or not?</p> | <p>(5x2=10)</p> |
| <p>Q.2 A patent application was filed with a set of claims on 1-1-2000 which were later amended in response to the First Examination Report (the "First Patent Amendment"). But, before the Patent office took the merit decision on the First Amendment, the applicant filed two successive amendments to the claims (the "Later Amendments"). The Controller, after hearing, refused the claims in the First Amendment for being allegedly anticipated by and/or obvious over the prior-art and the amended claims were refused because it did not fall within the scope of claims before amendment.</p> | <p>(10)</p> |

The applicant filed a divisional application on 13-2-2002 with materially the same set of claims as that submitted with the Later Amendments. The divisional application, after examination & hearing, was refused on the grounds as the claims filed with the divisional application were already rejected in the parent application and the claims did not fall wholly within the scope of the "claims as filed" and hence not allowable u/s 59 of Patent

Act 1970. The order refusing the divisional application was appealed before the Delhi High Court.

- a) Based on the above facts, frame five arguments each from the side of appellant and respondent
- b) Can a Divisional Application be maintained with a claim which was not part of the set of the claims as filed with the parent application?

Q.3 India ensures Geographical Indications (GI) protection through the enforcement of a special law on GIs, The Geographical Indications of Goods (Registration and Protection) Act, 1999. (10)

- a) Analyse whether and to what extent GI Act can provide protection to Agricultural, Manufactured and natural products in India.
- b) What are the various challenges associated with the GI enforcement in India against counterfeit products?

Q.4 Party A is a patent holder and Licensor belonging to the United States and party B a licensee, an Indian citizen residing in India entered into a licensing agreement for the distribution of Computer software in India. After a few months of entering into the agreement, there is a breach of license. As per the agreement, the arbitration clause states that patent disputes will be referred for Arbitration. The seat of arbitration is India and governing law of Arbitration is India. However, the governing law of contract and substance of dispute is New York(US) law. While making the arguments party B questions the validity of A's patent. Can the Arbitrator decide the validity of the patent in this dispute arising out of the contractual claim? Give reasons with relevant provisions and case laws. (10)

Q.5 Write short notes on **any two** of the following: (5x2=10)

- a) WIPO Arbitration and Mediation Centre
- b) Confidentiality Club
- c) Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification)
- d) Dynamic Injunction
